BEFORE THE INDIANA
CASE REVIEW PANEL

In The Matter of Betsy L. Gentry,	)	
Petitioner	)	
and	)	**CAUSE NO. 030218-29**
The Indiana High School Athletic Assoc. (IHSAA),	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-5-63 *et seq.*	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is an 18-year-old senior (d/o/b December 3, 1984) at Anderson High School (hereafter, referred to as "Anderson"). She attended Anderson Highland High School (hereafter, "Highland") for her freshman, sophomore, and junior years. She was a member of the varsity tennis team at Highland all three years. This past summer, Petitioner's mother remarried. The family moved into a residence within the boundaries of Anderson. The Petitioner enrolled in Anderson and completed on August 13, 2002, the IHSAA Athletic Transfer Report. Highland completed the form on September 4, 2002, indicating its belief the transfer was primarily for athletic reasons and recommending Petitioner be ineligible for competition pursuant to Respondent's by-law **C-19-4**.[1]

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[1]The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders ("B" for Boys, "G" for Girls), but most of the by-laws are "common" to all potential athletes and, hence, begin with "C." **Rule C-19-4** provides as follows:

Transfers for Primarily Athletic Reasons
To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school 'jumping' for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school,
provided, however, if a student transfers and it is not discovered at that time that the transfer was primarily for athletic reasons, then under those circumstances, the student may be declared ineligible for a period not to exceed 365 days following the date of enrollment or, may be declared ineligible for a period not to exceed 365 days commencing on the date that the Commissioner or his designee declares

Respondent, by its Commissioner, reviewed the matter and, on September 27, 2002, declared Petitioner ineligible pursuant to **C-19-4**. On October 10, 2002, Petitioner appealed this decision to Respondent's Review Committee. The Review Committee conducted its review on November 8, 2002, and issued its written decision on November 15, 2002, upholding the determination of ineligibility for Petitioner.

Respondent's Review Committee noted that Petitioner attended Highland for her first three years of high school. Her mother remarried in June of 2002, and then moved into a home located in the Anderson district. Anderson and Highland are both part of the same public school district (Anderson Community School Corporation). The school district has a local version of the so-called "senior rights" law that permits students who complete their junior years at one high school to remain at that high school for their senior years, even though their legal settlement may now be in the boundaries of a different high school.[2] Petitioner and her mother indicated the reason for the transfer to Anderson was in order for the mother to be closer to her employment in Indianapolis. There were also social reasons. Petitioner apparently has a number of friends at Anderson, and has participated in a number of social activities at that school. Highland indicated that it believed the transfer was for athletic reasons, citing statements indicating Petitioner's displeasure at being the No. 2 singles player for the tennis team, even though the tennis team had been successful, reaching the state finals in 2001. Petitioner, who had sought to become a mascot for Highland, allegedly stated to Highland personnel that, should she not become the mascot, she would transfer. There were also statements from the father of an Anderson player that should Petitioner transfer to Anderson, the Anderson team would be "a very strong team." The Review Committee also noted the new residence is further from Highland but approximately the same distance from Anderson as her former residence.

Based on these findings, the Respondent's Review Committee concluded that Petitioner did transfer schools with a corresponding change of residence by her parents, which would normally entitle her to full eligibility at Anderson.[3] "However, since the new home is just as far from Anderson as the old home, and since [Petitioner] has senior rights to remain at Highland her senior year, there is no

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the student ineligible which was the result of a
transfer for primarily athletic reasons. (All references are to the 2002-2003 by-laws.)

[2]The statutory version creates the same right, but allows a student to remain at the student's high school for the student's senior year even though the student has moved from the school district altogether. I.C. 20-8.1-6.1-1(a)(7).

[3]**Rule C-19-5. Transfer Eligibility with Change of Residence by Parent(s)/guardian(s)** A student who transfers with a corresponding change of residence to a new district or territory by the student's custodial parent(s)/guardian(s) may be declared immediately eligible, provided the change of residence was bona fide.

justification to transfer schools and no justification for full eligibility under Rule 19-5." (Review Committee decision, Transcript at 107). The Review Committee found that Petitioner's motivation was to obtain an athletic advantage by transferring to Anderson, where she would be the No. 1 singles player. Petitioner had planned to transfer to Anderson before the summer wedding of her mother. The Review Committee did not accept the non-athletic social reasons proffered by Petitioner as the reason for her transfer. Petitioner had a number of friends at both Anderson and Highland. A senior as well liked and athletically talented as Petitioner would not want voluntarily to transfer schools for her senior year. Petitioner did not present a compelling reason for her transfer that did not include a primary athletic reason.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed the adverse decision of the Review Committee to the Indiana Case Review Panel (CRP) on February 18, 2003.[4] The CRP notified the parties by memorandum of February 18, 2003, of their respective hearing rights. The Respondent was asked to forward its record. The parent was provided with a "Consent to Disclose Student Information." The parent, on March 5, 2003, elected to have the hearing proceedings open to the public. The Respondent provided the record of its proceedings on March 6, 2003. A hearing date was set for March 17, 2003. The record of the proceedings before the Review Committee was received on March 6, 2003, and photocopied and transmitted on that date to CRP members.[5]

The parties appeared on that date for the hearing. Petitioner was represented by her mother. Respondent was represented by counsel. Respondent introduced two additional exhibits. Exhibit R-1 is a memorandum to the Highland athletic director from the Highland guidance counselor.[6] Exhibit R-2 is a part of a newspaper story that appeared in the Anderson *Herald Bulletin* on July 20, 2001.

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[4]The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP's decision does not affect any By-Law of the IHSAA.

[5]The hearing was conducted before CRP members Joan Keller, chair designee; Pamela A. Hilligoss; James Perkins, Jr.; Michael L. Ross; Brenda K. Sebastian; and Terry Thompson.

[6]Although the Petitioner did not object to this exhibit, it is a hearsay document. The author was not present to be cross examined. Exhibit R-2 is part of a newspaper article. The record from Respondent's proceedings also contained a newspaper article from *The Herald Bulletin* as well as references to newspaper articles during presentations. See Transcript, pp. 22-23, p. 77. The newspaper articles have a greater indicia of reliability and less susceptibility to conjecture and speculation.

Petitioner did not object to either of these documents.

The following Findings of Fact and Conclusions of Law are based upon the evidence and testimony presented at the hearing in this matter, as well as the record as a whole. All Findings of Fact are based upon evidence presented that is substantial and reliable. I.C. 4-21.5-3-27(d).

FINDINGS OF FACT

1. Petitioner is an 18-year-old senior (d/o/b December 3, 1984) enrolled in Anderson High School. She attended Anderson Highland High School for her freshman, sophomore, and junior years of high school.

2. Petitioner's mother became engaged in December of 2001. She remarried on June 15, 2002. Petitioner's house in Highland was approximately 1500 square feet. The newly formed family would require a larger house. Petitioner's step-father had a condominium, which would likewise be too small for the newly formed family. A house was located sometime in March of 2002, but a bid was not made until May 5, 2002. The Highland residence was eventually sold on contract, while the condominium is being rented. The family moved from its residence in the Highland district to the residence in the Anderson district on August 1, 2002.[7]

3. Petitioner has been an avid tennis player. She participated in U.S. Tennis Association (USTA) junior tennis until the end of her eighth grade year. Petitioner wished to participate in more typical high school activities, with which USTA involvement would have interfered. Since entering high school, she has participated in interscholastic competition sanctioned by Respondent as well as local summer tournaments.

4. Petitioner had been the No. 2 singles player on the Highland team. The No. 1 singles player is reportedly the best player in the state and a defending champion. Petitioner, during the 2002 season, began to experience tendinitis, a condition more commonly known as "tennis elbow." Prior to experiencing this condition, Petitioner had expressed a desire to play No. 1 doubles. Although her coach first learned of this during the summer of 2001, it did not seem to pose any particular problem. He did not raise this as an issue during the Respondent's investigation. In fact, he promoted Petitioner as part of a doubles team that could make it to the state finals.

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[7]The Respondent's Review Committee believed that the fact the new residence was equi-distant from the two high schools was relevant. The CRP disagrees. The location of the residence within a certain attendance area is relevant; its distance to another high school is not.

Petitioner did play on the No. 1 doubles team until her injury forced her to miss playing and practicing from April 23, 2002, through May 17, 2002.

5. When Petitioner returned, the Highland coach did not require any medical clearance or inquire as to any medical restrictions. He asked Petitioner to play No. 2 singles in hopes Highland could win the sectional. Petitioner did advance to the regional competition, but had to retire due to the pain. Petitioner wanted to play doubles, in part to protect herself from further injury.

6. The Highland tennis coach was not consistent in his testimony. At one point, he stated Petitioner did not see the trainer, but later testified that she did receive attention and treatment from the Highland trainer. He seemed unsure whether Petitioner was receiving medical treatment for her "tennis elbow," but both the trainer and the Highland athletic director were aware that she was receiving such treatment.

7. Petitioner did inquire of her coach whether it might be possible for her and the No. 1 singles player to be the No. 1 doubles team during the 2003 season. The coach indicated he would discuss this with the No. 1 singles player but not till after the tournament. The discussion never occurred because Petitioner transferred. Petitioner was aware that should she wish to be No. 1 singles player, she could engage in a "challenge match" as a means of securing the position. Both Petitioner and the Highland coach agree that she never initiated such a "challenge match." Although the Highland coach is the source of the statement that Petitioner was dissatisfied, he also provided testimony that supports Petitioner's rendition that she was more interested in No. 1 doubles.

8. Petitioner denies ever expressing dissatisfaction at being the No. 2 singles player behind the No. 1 singles player. In support of this, she notes that she wanted to play doubles, in part to protect herself from further injury and in part because the opportunity to reach the state finals were enhanced by playing on the No. 1 doubles team.

9. The Highland tennis coach related a conversation he had with the father of a tennis player at Anderson. Petitioner and another Highland player were playing tennis with two Anderson players, with the father paying for the court time. The Highland coach indicated that this was not a problem, but asserted that a statement by the father to the effect that, should Petitioner play for Anderson, the Anderson team would be much better, altered the tennis coach's view of the situation. The declarant was never interviewed regarding the import of this alleged statement, nor was the declarant presented for examination and cross examination at the hearing in this matter.

10. The Highland coach testified that he inquired of a former tennis player whether Petitioner was planning on moving to Anderson and was advised that this was likely. However, this declarant

was never interviewed regarding the import of this alleged statement, nor was she presented for examination and cross examination at the hearing in this matter.

11. Highland personnel were aware that Petitioner's mother had become engaged and was to remarry during the summer of 2002.

12. Anderson and Highland are both high schools within the same public school corporation, the Anderson Community School Corporation. There is a long-standing policy, albeit unwritten, that the high schools are encouraged not to air publicly any disagreements regarding transfers. This unwritten but viable policy does not require absolute agreement. The genesis for the policy stems from apparent disputes that occurred nearly two decades ago. School personnel testified that there is considerable fluidity of student migration between the two high schools. Most transfers are not related to athletics, but those that are related are, by and large, resolved without disagreement. The Highland athletic director testified that there have been only two (2) recent disputes over transfers that involved athletics.

13. On May 3, 2002, Petitioner had a conversation with the Highland athletic director regarding trying out to become the Highland mascot. The Highland baseball coach was also present. During this conversation, Petitioner expressed her general dissatisfaction with her current role on the tennis team and indicated that, should she not be selected for the mascot, she would transfer. Petitioner admits the statement and the circumstances. She explained that the statement was the result of frustration and anger about rumors of her impending transfer to Anderson. She also stated that, even had she been named the mascot, she would have transferred to Anderson.

14. The Highland athletic director acknowledged that athletic participation was not the only motivating factor for Petitioner's transfer, but he stated he believed it figured prominently in the decision.

15. Although Highland personnel were aware of the engagement and remarriage of Petitioner's mother, Anderson personnel did not inquire further regarding these factors when Anderson learned that Highland opposed athletic eligibility for Petitioner. Notwithstanding the athletic transfer, Anderson acknowledged that Petitioner has "legal settlement" within the Anderson attendance boundaries.

16. The Anderson Community School Corporation has a local version of the so-called "senior rights" rule that would have permitted Petitioner to attend Highland her senior year even though she lived in the Anderson attendance area. The local "senior rule" creates a choice for the Petitioner and does not mandate her attendance at her former school.

CONCLUSIONS OF LAW

1. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are considered "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-5-63 *et seq*. The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Student. The Petitioner timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.

2. Although Respondent, in its investigation of transfer situations, relied upon representations and documents that may not otherwise be admissible or relevant in a due process hearing under the Administrative Orders and Procedures Act, the Case Review Panel must base its decisions on evidence that is substantial and reliable. In this matter, the CRP has been invited to engage in conjecture and speculation regarding the intent and import of hearsay declarations by persons not presented for examination or cross examination. Even in the absence of objection to such statements or documents, the CRP is not required to treat such obvious hearsay as "substantial and reliable," especially where it does not satisfy any of the exceptions to the hearsay rule. The Highland tennis coach is the only source for two such statements, the one from the father of an Anderson player and the one from a former player. The tennis coach is the only one who testified that Petitioner expressed dissatisfaction at playing behind the No. 1 singles player, even though his testimony actually supports Petitioner's rendition of her desire to play No. 1 doubles and not No. 1 singles. The tennis coach was also inconsistent in his testimony regarding Petitioner's receiving treatment from the Highland trainer or her receiving continuing medical attention. His decision to play her at No. 2 singles in order to win the sectionals, despite her long absence due to "tennis elbow," raises serious questions regarding his judgment. The foregoing damaged his credibility. The hearsay he provided was overly prejudicial to Petitioner, greatly outweighing any relevancy.

3. Anderson High School failed to conduct a satisfactory investigation to determine whether Petitioner had satisfied Respondent's criteria for continued eligibility. Its decision not to conduct a satisfactory investigation was influenced by a long-standing unwritten policy of the public school district that militates against public disagreements between the high schools regarding transfer disputes.

4. Had Anderson High School conducted a satisfactory investigation, it would have discovered that there were legitimate reasons for the Petitioner's move and eventual enrollment in Anderson, to wit: the engagement of Petitioner's mother in December; the mother's bidding on

a house in the Anderson area on May 5, 2002; her remarriage in June of 2002; her selling of her Highland residence on contract and her husband's renting of his condominium; and the family's move into the Anderson residence on August 1, 2002. Anderson High School accepted these facts for the determination of Petitioner's right to attend Anderson High School. Anderson offers no reason why these same facts should be negated because of athletic objections from Highland.

5. Petitioner, under the school district's "senior rights" rule, had the election to remain at Highland or attend Anderson. She chose Anderson. The choice was hers to make and is not dictated by Respondent's by-laws.

6. Petitioner's change of residence was a legitimate, bona fide one that satisfies **Rule C-19-5**.

ORDER

1. The decision of the Respondent to deny eligibility to Petitioner is nullified. The Petitioner shall have immediate full athletic eligibility. The vote in this regard was 5-1.

DATE: March 21, 2003 /s/ Joan Keller, Chair
Indiana Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.

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